SUPREME COURT, U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

No. 657

CARL HUNT,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the State of Missouri

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Petitioner Carl Hunt prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Missouri entered in the above entitled case on June 8, 1970.

OPINION BELOW

The opinion of the Missouri Supreme Court is unreported to date but is reproduced in the appendix to this petition (Appendix A).

JURISDICTION

The final judgment of the Supreme Court for the State of Missouri was entered on June 8, 1970. The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 2104.

QUESTION PRESENTED

Has the Supreme Court of Missouri deprived the petitioner of the protection afforded him through the Fourth Amendment of the Constitution of the United States in holding that the uncorroborated statements of a heroin addicted affiant afforded the search warrant issuing judge a substantial basis for his finding of probable cause as the affiant's assertion concerning the theft of items delivered to petitioner's place of business was pure hearsay?

STATEMENT

Petitioner Carl Hunt was indicted on October 17, 1967 for receiving stolen property in the amount of $50.00 or over. The basis for issuance of said indictment was the fruits of a three-hour search of Mr. Hunt's business, C & H Auto Parts, located at 2420 Hadley, St. Louis, Missouri, conducted under a search warrant issued on September 22, 1967 by Circuit Judge Waldo C. Mayfield.

Judge Mayfield issued search warrant to police Sergeant Lloyd Altemus upon Sergeant Altemus' information and belief that certain socket wrenches and tools taken in a burglary of Murray Motors, 4879 Natural Bridge, were housed in the building at 2420 Hadley.

To support this information and belief, Sergeant Altemus presented the affidavits sworn before Judge Mayfield of two witnesses: Frank Gollhofer, the manager of Murray Motors, and one George Michael Hoffman.

Gollhofer's affidavit simply asserts that between September 5 and September 6, 1967 the garage and office of Murray Motors was burglarized and he listed items that were missing from his employer's place of business.

Since neither Sgt. Altemus nor assisting Officers Reeves and Davis had any personal knowledge concerning the whereabouts of the proceeds of the Murray Motors burglary (Tr. 134), it was then incumbent upon the reviewing judge to rely fully upon George Michael Hoffman's affidavit.

Affiant Hoffman's affidavit reads as follows:

> "Comes now George Michael Hoffman and states that on September 6, 1967, I saw one James Reynolds, alias Frankie Lyman, who I have known for 12 or 15 years. I saw him about 9:00 or 10:00 A. M. on that morning and he said he had some pieces he wanted to sell and he had just left Joe's, a fence, and that Joe would not give him a decent price for these pieces. He asked me if I knew where he could get rid of them and I told him yes, and we then went to a building located at 2420 Hadley Street, known as C & H Auto Parts, run by a Carl Hunt, and we both carried into that building two small tool boxes, red in color, one battery charger, an empty tool chest, a comptometer machine and various loose hand tools, including an impact wrench, and various snap-on tools, which included wrenches and sockets and also some screw-drivers. We carried the battery charger and two tool boxes into the body shop of the building, with an entrance on North Market, and we carried the other tools and the comptometer machine into the motor shop part of the building, which has its entrance on Hadley Street.
>
> "A week or so later I was riding in an automobile with James Reynolds and we passed Murray Motor Company at 4870 Natural Bridge, and James Reynolds told me he had gotten all the above described property from that company. He referred to Murray Motors and said that he had 'beat' them, which is an expression that means he stole them."

On April 5, 1968, a hearing to suppress the evidence obtained in the search of C & H Auto Parts was heard before Judge Mayfield. At said hearing Sgt. Altemus testified that George Hoffman had not been an informer for him prior to September 22, 1967 and that to his knowledge he had not been an informer for any other police officer. Altemus, likewise, testified that any knowledge he had concerning items missing at Murray Motors came from George Hoffman. Judge Mayfield denied petitioner's application to suppress the product of the search warrant in full (Motion to Suppress, Tr. 25-29).

Petitioner renewed his objection to the product of the search at the trial, wherein the trial Judge complied with the ruling of his fellow Circuit Judge (Tr. 97).

Additional evidential information was obtained from Hoffman concerning his affidavit at the subsequent trial of this cause. Hoffman admitted prior felony convictions for drug addiction and possession of narcotics (Tr. 240). Hoffman testified that at the time of the search warrant application, he had charges pending against him for the sale of narcotics and for carrying a concealed weapon (Tr. 284). On the day Hoffman executed the affidavit before Judge Mayfield he was suffering drug withdrawal symptoms, having "shot" 15 heroin capsules the previous day (Tr. 261). Hoffman was given thorezin pills and medication immediately subsequent to the filing of his affidavit (Tr. 301).

On May 3, 1968, the jury returned its verdict of guilty as charged. On May 10, 1968, petitioner's punishment was assessed at the maximum, 10 years. On June 18, 1968, the trial court overruled the motion for a new trial and formally sentenced appellant Hunt to ten years in the Department of Correction.

REASONS FOR GRANTING THE WRIT

Freedom from unreasonable searches and seizures is granted in the Fourth Amendment to the Constitution which provides as follows:

> "The right of the people to be secure in their persons, houses, papers and effects shall not be violated and **no warrants shall issue but upon probable cause** supported by oath or affirmation particularly describing the place to be searched and the persons or things to be seized" (Emphasis added).

Petitioner Hunt complains most bitterly that his rights as guaranteed under this Fourth Amendment were denied him by Judge Mayfield's issuance of said search warrant in the complete absence of probable cause for such action.

This Court in its two most recent decisions in this area has gone to great lengths to formulate guidelines which judges must follow in the issuance of search warrants.

In **Aguilar v. Texas**, 378 U. S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723, two police officers submitted an affidavit which stated:

> "Affiants have received reliable information from a credible person and do believe that heroin, marijuana, barbituates and other narcotics and narcotic paraphernalia are being kept at the above described premises for the purpose of sale and used contrary to the provisions of the law." 378 U. S. 108, 109.

Based upon this affidavit a search warrant was issued in the Aguilar proceeding. Bearing in mind that Sgt. Altemus did not make the representation that Hoffman was credible and being mindful that the information submitted to Judge Mayfield concerned itself with the location of

items stolen some sixteen days prior to the search warrant application, petitioner urges that the affidavits in the case at bar fall short of that which was presented to the Magistrate in the Aguilar proceeding. Speaking through Mr. Justice Goldberg, this Court spoke with regard to the constitutional requirements for obtaining a state search warrant:

> "Although the reviewing Court will pay substantial deference to judicial determinations of probable cause, the Court must still insist that the Magistrate perform his 'neutral and detached' function and not serve merely as a rubber stamp for the police . . . Magistrate here certainly could not judge for himself the persuasiveness of the facts relied on . . . to show probable cause. He necessarily accepted without question the informant's suspicion, belief on mere conclusion . . . The search warrant should not have been issued because the affidavit did not provide a sufficient basis for a finding of probable cause and that the evidence obtained as a result of the search warrant was inadmissible in petitioner's trial." 378 U. S. 115, 116.

While bearing in mind in the instant case Sgt. Altemus had to rely solely upon the statement of George Hoffman, a narcotics addict whose credibility was certainly questionable and that he was required to hope that the passage of sixteen days did not result in the relocation of goods that may have come from Murray Motors, a finding of probable cause seems remote. A statement made by Judge Mayfield at the hearing on a motion to suppress the fruits of the search casts grave doubt as to whether he was indeed performing his neutral and detached function as demanded by Justice Goldberg or was serving merely as a rubber stamp for the police:

> "These men who have testified are police officers, they are men sworn to uphold the law and they

> are not totally inexperienced. You men are not rookies, you are not beginners, and I'm sure not going to set myself up as a little God in street clothes, that I know more than they do about how to enforce and practice our criminal laws. I rely upon, a whole lot upon, the reliability of these officers and their judgment" (Motion to Suppress, Tr. 26, 27).

This Court in **Spinelli v. U. S.**, 393 U. S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637, emphatically insisted upon the exercise of an independent and neutral judgment by a detached magistrate before a search warrant may issue. Speaking through Mr. Justice Harlan, this Court said:

> "Applying these (Aguilar) principles to the present case we must first consider the weight to be given the informer's tip when it is considered apart from the rest of the affidavit. It is clear that a Commissioner could not credit it without abdicating his constitutional function. Though the affiant swore that his confidant was 'reliable' he offered the magistrate no reason in support of this conclusion. Perhaps more important is the fact that Aguilar's other test has not been satisfied. The tip does not contain a sufficient statement of the underlying circumstances from which the informer concluded that Spinelli was running a bookmaking operation. We are not told how the FBI source received this information—it is not alleged that the informant personally observed Spinelli at work or that he had ever placed a bet with him. Moreover, if the informant came by the information indirectly, he did not explain why his sources were reliable." 393 U. S. 413, 414.

Mr. Justice Harlan has therefore told us that when an informant is utilized in the issuance of a search warrant, the issuing Magistrate is to utilize three criteria in evaluating such evidence: (1) Said informant must be

shown to be credible and reliable. (2) The source of the informant's information must be shown. (3) Said source must be shown to be credible and reliable.

Petitioner respectfully submits that the facts surrounding the issuance of the search warrant in the instant case fall terribly short of meeting these three criteria.

The facts presented as they relate to informant Hoffman's credibility are:

(a) He was not a known police informant. He had in fact never supplied the police with any previous information (Motion to Suppress, Tr. 8).

(b) He was a narcotic addict who was "hooked" at the time of his arrest and had in fact taken 15 to 20 Heroin capsules on the day of his arrest (Tr. 261).

(c) On the day he was presented to Judge Mayfield to swear out his affidavit he was suffering severe drug withdrawal symptoms and was given medication only subsequent to the swearing of said affidavit (Tr. 299).

The second criteria was met in the instant case when the source of Hoffman's information was alleged by him to be an associate of his, one James Reynolds, alias Frankie Lyman.

But the third criteria calls for the source of Hoffman's information to likewise be shown to be credible and reliable, and once again the facts as presented in this case fall woefully short of meeting that criteria: First, Reynolds was not shown to have been known to either the police or to Judge Mayfield as a reliable source of information; secondly, Hoffman obtained this information through a chance remark made to him by one Reynolds (Tr. 303).

Petitioner respectfully submits that the Missouri Supreme Court erred in distinguishing this case from the **Aguilar** and **Spinelli** cases when it stated:

> "The fact that the affidavits in this case expressed the requisite evidential basis for a finding of probable cause distinguishes this case from the cases of Aguilar v. Texas, 378 U. S. 108, 84 S. Ct. 1509, 12 L. Ed. 723, and Spinelli v. U. S., 393 U. S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637. In those cases affidavits for search warrants, found insufficient, showed that they were based upon information received from unidentified informers. **The problem in those cases was the extent to which the magistrate might rely upon such information in determining the existence of probable cause. That question is not presented in a case such as this where the application displays an evidential basis for a finding of probable cause**" (emphasis added) (Appendix A, page 4).

Petitioner submits that the very same question exists in this case that existed in the **Aguilar** and **Spinelli** cases: The problem is to what extent a magistrate may rely on an informant's tip. Whether that informant is unnamed or is a narcotics addict who is presented before a magistrate while enduring severe withdrawal symptoms are but factors to be weighed by the magistrate and not a basis distingushing the two cases. The Missouri Supreme Court states that an evidential basis for a finding of probable cause over and above informant Hoffman's tip existed. The facts are quite clear that Hoffman's affidavit was the sole basis for Judge Mayfield's issuance of the search warrant. The police had no knowledge concerning whereabouts of the proceeds of the Murray Motor burglary. There was no evidence other than a statement by the manager of Murray Motors listing the goods stolen and informant Hoffman's statement presented to Judge Mayfield for his consideration.

Petitioner can state his cause no more eloquently or succinctly than did Mr. Justice Douglas in U. S. v. Draper, 358 U. S. 307; 3 L. Ed. 327, 79 S. Ct. 329.

> "Here the officer had no evidence apart from the mere word of an informer that petitioner was committing a crime . . . If they went to a magistrate to get a warrant of arrest and relied solely on the report of the informer it is not conceivable that one would be granted."

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted

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